



# Weakened Warehouse Worker Protection Act Still Packs Punch For Certain New York Employers: 5 Key Changes to Know

Insights

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With the June 19 effective date on the horizon, employers subject to New York's Warehouse Worker Protection Act should begin preparations to comply with the law's requirements sooner rather than later. Signed into law at the end of 2022, the WWPA was watered down — and much to the relief of employers, delayed — by the state legislature earlier this year. The revised version, while diluted by amendments, still marks a sea change for employers of warehouse workers. Here's a summary of the law and the five key changes affected employers need to know about.

## What does Warehouse Worker Protection Law Require?

New York's WWPA requires employers at warehouse distribution centers to disclose any quota systems used to track, monitor, and discipline warehouse workers. The law is aimed at ensuring warehouse workers are aware of the standards used to evaluate their performance.

Specifically, employers must provide a written description of each quota applicable to the employee upon hire or within 30 days of the law's effective date, and within two business days of any quota change. Employees (current and former) also have the right to request their own work speed data and the aggregate work speed data of similar employees. Importantly, employers that do not use quotas (as defined by the WWPA) or monitor work speed data are **not** being required to do so.

The WWPA protects employees from disciplinary action or termination where quotas are undisclosed or do not allow for proper breaks. Significantly, it also creates a rebuttable presumption of retaliation where an adverse action occurs within 90 days of activity protected by the statute.

## 5 Key Changes to Know About

The amendments to the WWPA include five key changes that employers need to familiarize themselves with in order to understand their obligations.

### 1. Key Definitions are Revised

The revised bill amends certain key definitions, narrowing the scope of the law's application in certain areas:

- **Employee** – The amendments provide greater clarity on who is covered by the provisions of the WWP. An “employee” under the WWP means someone who is not exempt from minimum wage and overtime compensation provisions. Drivers or couriers to or from a warehouse distribution center are excluded from the definition.
- **Employer** – The term “employer” has been revised to apply to employers that employ or exercise control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center OR 1000 or more (up from 500) employees at one or more warehouse distribution centers in New York. The definition also streamlines language concerning how employees of a controlled group of corporations should be counted to determine the WWP’s applicability.
- **Aggregated Work Speed Data** – Formerly “aggregated data,” this definition was revised to clarify that “aggregated work speed data” is a compilation of employee work speed data for multiple employees in summary form such that the data cannot be identified with any individual.
- **Quota** – In addition to the work standards identified in the original law (i.e., productivity speeds or quantified number of tasks or production of material within a specified period), the revised WWP specifies that a quota includes work standards that may result in an adverse action for the employee if they fail to meet the performance standard.
- **Warehouse Distribution Center** – The amendments exempt farm product warehouses from the WWP’s application.

## 2. Amended Law Limits Employees’ Right to Request Work Speed Data

In addition to written descriptions of applicable quotas, employers must provide current and former employees with certain work speed data on an individual basis and in the aggregate upon request. In a reprieve for employers, the amended law significantly limits the scope of these mandatory disclosure requirements. This includes limitations to what can be requested, the circumstances in which it can be requested, how many times a request can be made, and the time an employer has to fulfill each request.

Under the amended WWP, current and former employees who (1) believe they have been disciplined for failing to meet a quota or (2) have missed a meal, rest period, or use of bathroom facilities to meet a quota have the right to request:

- A written description of each quota the employee or former employee is subject;
- A copy of the most recent 90 days of personal work speed data; and
- A copy of the aggregate work speed data for similar employees at the same establishment during the same period.

Employers must provide the requested information at no cost to the current or former employees, as long as the request is made in accordance with the WWP. A current employee is not limited in the

number of requests they can make, but a former employee may make only one request. Employers must provide the requested information no later than 14 days from the date of the written or oral request.

### **3. Requires Translation of Written Quota Descriptions and Personal Work Speed Data**

New York has made a concerted effort over the last few years to expand language access for employees, efforts that employers can expect to continue in coming years. Accordingly, it's not much of a surprise that amendments to the WWPA require employers to provide written quota descriptions and personal work speed data in English *and* in any language identified as the employee's primary language.

### **4. Record Retention Requirements Revised**

Only a single revised sentence of a multi-paragraph section outlining recordkeeping requirements remains from the original bill. Under the amended WWPA, employers are required to establish, maintain, and preserve records for three years to ensure compliance with employee or commissioner requests for "data."

The term "data" is not defined in the WWPA, but presumably covers the information employers are required to provide employees as of right and upon request (i.e., written quota descriptions and requested individual and aggregated work speed data). Accordingly, it would be prudent for employers to develop a streamlined system to collect, compile, and preserve this information.

### **5. Anti-Retaliation Provision Narrowed**

In contrast to the original version of the WWPA, which included language prohibiting retaliation more generally and created a rebuttable presumption of unlawful retaliation, the amended WWPA more clearly defines the circumstances where a rebuttable presumption of unlawful retaliation is created. Specifically, there remains a rebuttable presumption of unlawful retaliation if the employer takes any adverse action against an employee within 90 days of the employee:

1. Initiating the employee's first request in a calendar year for information about a quota or personal work speed data; or
2. Making a complaint related to a quota alleging any violation of the WWPA's requirements concerning quotas and notice, distribution, and recordkeeping requirements to the Commissioner of Labor, Department of Labor, other local or state governmental agency, or the employer.

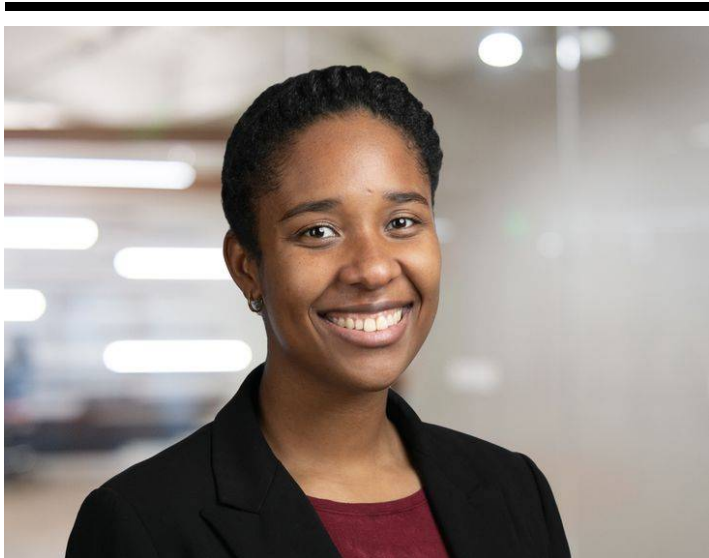
While the WWPA's retaliation provision was narrowed, employers should be mindful that the New York Labor Law generally prohibits retaliation against employees for exercising rights under the Labor Law.

## Conclusion

While the Department of Labor is likely to issue further guidance about the WWPA, employers in the warehouse industry should act now to take steps to comply with the provisions of the law now. If you use quotas for your warehouse employees, you should:

- Create written descriptions of all quotas employees must abide by and prepare to distribute them to employees within 30 days of the WWPA's effective date.
- Develop or review methods to preserve and easily share employee work speed data.
- Develop or review methods to compile, preserve, and easily share the aggregated data of an employee's peers.
- Develop a written process to comply with oral or written requests for information by current or former employees within 14 days of the request.
- Procure necessary services to translate the written quota descriptions and personal work speed data, to the extent there are employees with a primary language other than English.
- Advise and train any employees with authority to implement the provision of the WWPA and employees with supervisory authority of the Act's requirements and reinforce anti-retaliation policies and procedures.

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